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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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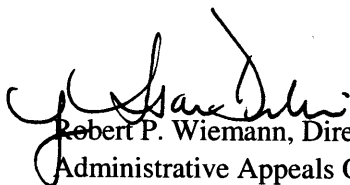
FILE: LIN 02 254 53873 Office: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy*

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a restaurant that seeks to employ the beneficiary as a restaurant manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform the duties of the position. On appeal, counsel asserts that the occupation of food manager requires a baccalaureate and that the beneficiary's work experience equates to a baccalaureate degree.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's letter, dated January 14, 2003, that responds to the director's request; (4) the director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as its restaurant manager. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and counsel's response to the

director's request for further evidence. As described in the original petition, the beneficiary's duties entail: supervising and training all employees, including kitchen staff; maintaining kitchen equipment and supplies; designing the menu; managing the procurement of all food, kitchen supplies, and equipment; negotiating contracts with suppliers; negotiating catering contracts; managing the restaurant's budget; processing the payroll; and communicating with the petitioner's accountant to arrange for proper employee withholding for tax and insurance purposes. The petitioner indicated that the beneficiary would take full responsibility for the operations of the restaurant. The petitioner also indicated that it requires a candidate for the job to have a bachelor's degree or its equivalent, and good familiarity with the restaurant industry.

The director found that the proffered position was not a specialty occupation. The director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)* and its classification of food service manager. The director stated that the *Handbook* did not indicate that the minimum requirement for entry into the position of food service manager or restaurant manager was a baccalaureate degree in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel also cites to the *Handbook's* classification of food service manager, and refers to the preference that food service and restaurant chains have to hire people with degrees in restaurant management. Counsel also asserts that many universities offer degrees in the field of food service management.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As correctly noted by the director, the *Handbook* states on page 56:

Most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. Food service and restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude.

....

A bachelor's degree in restaurant and food service management provides a particularly strong preparation for a career in this occupation. A number of colleges and universities offer 4-year

programs in restaurant and hotel management or institutional food service management. For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in these fields leading to an associate degree or other formal certification.

Although the *Handbook* does not specifically address the hiring practices of single owner restaurants similar to the petitioner, it does clearly establish that a four-year baccalaureate degree in a specific specialty is not the minimum educational requirement for entry into the food service manager field. Employers appear to hire both graduates with a specific restaurant management degree as well as graduates with degrees in other academic disciplines. To the extent that a baccalaureate or higher degree or its equivalent in a specific specialty is not required for entry into the field, the proffered position is not a specialty occupation. The petitioner has not established the first criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A).

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation for academic credentials required of other restaurant managers. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner indicated that the owner of the restaurant now serves as the restaurant manager; however, it provided no further information on the owner's academic credentials or work experience. Based on this documentation, the petitioner has not established that it requires an individual hired as restaurant manager to possess a bachelor's degree in a specific specialty.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties appear to be detail-oriented. Nevertheless they do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because of her abundant work experience. Counsel provides no further documentation to establish the equivalency of the beneficiary's work experience to a baccalaureate degree in food service management. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must

demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not possess a foreign baccalaureate degree in food service or restaurant management that has been determined to be the equivalent of a U.S. baccalaureate in the same or related field. Therefore, the petitioner has to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and in 8 C.F.R. § 214.2(h)(4)(iii)(D).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), the petitioner can submit an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. As correctly noted by the director, the work experience evaluation document written by Michelle A. Birch, Global Education Group, Inc., is not sufficient to establish this criterion. The record is devoid of any information that Ms. Birch is affiliated with a university that has a program to grant college credit for work experience, and that this same university presently gives her the authority to grant such credit. The petitioner also has not provided sufficient documentation to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss this issue further.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.